

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 100-179, Ch. I

[Docket No. HM-188]

Transportation of Hazardous Materials Between Canada and the United States

AGENCY: Research and Special Programs Administration, Materials Transportation Bureau, DOT.

ACTION: Advance notice of proposed rulemaking; notice of public hearing.

SUMMARY: The Materials Transportation Bureau (MTB) solicits public comments relative to any future action it should take concerning the provisions of § 173.8 of the Department's Hazardous Materials Regulations (HMR). This section allows, with certain exceptions, shipments of hazardous materials to be transported by railroad into or through the United States in conformance with the regulations of the Canadian Transport Commission (CTC). MTB will consider oral comments at a public hearing as well as written comments. Commenters may also address matters related to proposed requirements of Canada's Ministry of Transport (Transport Canada) even though such comments would only be relevant to § 173.8 if they are adopted as final requirements under Canada's Transportation of Dangerous Goods Act at a future date.

DATE: hearing June 2, 1983, beginning at 9:30 a.m.

ADDRESS: The Hearing will be held in room 2230, Nassif Building, DOT Headquarters, 400 Seventh Street, SW., Washington, D.C.

*** Written comments: Submit written comments to Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. Comments should identify the docket and be submitted in five copies. The Dockets Branch is located in room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Public dockets may be reviewed between the hours of 8:30 a.m. and 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Edward A. Altemos, International Standards Coordinator, Materials Transportation Bureau, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone: (202) 426-0656.

SUPPLEMENTARY INFORMATION: Until the mid 1970's, the regulations of the CTC [formerly the Board of Transport

Commissioners for Canada] were, with few exceptions, identical to those found in the HMR. It was due to this regulatory compability that trans-border shipments of hazardous materials moved without confusion on the part of shippers and carriers as to the applicability of regulatory requirements of each country. This may not be the present situation since CTC's and DOT's regulations for the safe transportation of hazardous materials differ in a number of significant ways.

The CTC regulations are entitled "Regulations for the Transportation of Dangerous Commodities by Rail" (TDCR) and are prescribed by "General Order No. 1974-1-Rail" of the Canadian Transport Commission dated July 31, 1974. The following is stated in general notice as a forward to the TDCR:

These regulations are applicable to dangerous commodities transported over railways subject to the jurisdiction of the Commission.

Paragraph 9(a) of § 173.8 of the HMR reads as follows:

Except for hazardous wastes and hazardous substances, shipments of hazardous materials which conform to the regulations of the Canadian Transport

Commission (formerly the Board of Transport Commissioners for Canada), may be transported from the point of entry in the United States to their destination in the United States, or through the United States en route to a point in Canada. Empty rail tank cars may be transported in conformity with Canadian Transport Commission regulations from point of origin in the United States to a point of entry into Canada.

Considering the applicability of CTC's TDCR and the paragraph from the HMR quoted above, so-called reciprocity in regulations exist at the present time only in regard to transportation of hazardous materials (dangerous commodities) by railroad and only to materials that are subject to both CTC and DOT regulations (e.g., there is no CTC regulation presently applicable to combustible liquids; therefore, the provisions of § 173.8 do not apply and combustible liquids must be transported in conformance with the HMR).

Most recent major revisions to CTC's regulations became effective on May 1, 1982. Many of the revisions reflect conformance to international standards based on recommendations issued by the United Nations Committee of Experts on the Transport of Dangerous Goods. The following discussions do not constitute a comprehensive analysis of CTC's regulations; they are provided only to illustrate some of the differences between CTC and DOT regulations (two numbers before a decimal in a section citation denote a CTC rule, e.g., § 71.1, whereas three numbers before a decimal

denote a DOT rule contained in 49 CFR, e.g., § 171.1):

1. The list of dangerous commodities in § 72.5 most closely aligns with the list of the International Maritime Dangerous Goods Code (IMDG Code) and differs in many respects from the list in § 172.101. For example, numerous explosives descriptions not given in § 172.101 are listed in § 72.5. The list is virtually identical to DOT's optional hazardous materials table in § 172.102 and quite similar to the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, use of which is permitted by § 171.11.

2. A number of materials are classed differently in § 72.5 than they are in § 172.101. Also, the international class numbering system is used in § 72.5 rather than the class words in § 172.101. Examples are: (1) Aluminum hydride bears class number 4.2 which, according to § 72.1, means a substance "liable to spontaneous combustion" whereas, in § 172.101, it is classed as a Flammable solid; (2) Ammonia, anhydrous and Hydrogen chloride bear class number 2.3 which, according to § 72.1, means "Poison gases" whereas, in § 172.101, each of these materials is classed as a nonflammable gas; and (3) according to § 72.1, high-strength nitric acid, e.g., a 72% concentration, bears class number 8 for corrosives, and according to § 172.101, nitric acid at this concentration is classed as an oxidizer.

3. Section 73.427 sets forth CTC's requirements for shipping papers. Included is a provision that the class number of a material be used rather than a class word(s) required by § 172.202 in referencing § 172.101. Use of class numbers alone is not generally permitted by the HMR for imported shipments moving by rail or highway; therefore, for basic descriptions of hazardous materials on shipping papers appearing in the United States, only shipments by rail coming from Canada are presently permitted (by § 173.8) to have classes identified on shipping papers by numbers in place of class words.

4. Except for placards for Explosives and Poison Gas, placards for railcars specified in § 74.548 are wordless enlarged UN labels bearing class numbers in the bottom corner. For example, the only distinction between a FLAMMABLE GAS and a FLAMMABLE LIQUID placard is class number 2 or 3, respectively, in the bottom corner. DOT requires class words on placards except when identification numbers are permitted and displayed. In § 74.548a, CTC not only requires identification numbers to be displayed on bulk packagings, as is required by DOT, but

on every carload, container load, or trailer load of hazardous materials requiring a placard. Except for division 2.3 (poison gas), which is addressed in § 74.548b, § 74.548a requires identification numbers to be displayed only on placards and does not permit optional use of orange panels.

5. The CTC regulations contain no provisions for the transport of consumer commodities as provided by the HMR.

6. Paragraph 73.9(c) permits, with certain exceptions, the transport into the United States of hazardous materials prepared in accordance with the IMDG Code, provided they are transported in closed freight containers and that the DOT certification statement appears on the shipping papers. The HMR do not generally permit the transport by rail of hazardous materials packaged or placarded in accordance with the IMDG Code without regard to the corresponding requirements in the HMR.

7. The CTC regulations contain no listing of forbidden materials, as listed in § 172.101, and certain provisions appear in § 173.21 for which there is no corresponding provision in § 73.21. For example, § 173.21(d) forbids "... materials (other than those classed as explosives) which will detonate in a fire". The CTC regulations contain no such general prohibition. Other examples of materials forbidden for transport under the HMR, but permitted by the CTC regulations, include "new" explosives not approved in accordance with § 173.86 and Methyl ethyl ketone peroxide containing more than 9 per cent active oxygen.

MTB believes that it should make every reasonable effort to recognize shipments coming into the United States in conformance with CTC regulations (and future Transport Canada regulations) in consideration of the fact that (1) CTC fully recognizes shipments moving into Canada under DOT regulations (§ 73.8), and (2) more than \$3 billion worth of hazardous materials (dangerous commodities) move annually between our countries.

Commenters are invited to address any potential safety impacts being encountered or contemplated as a result of the present "reciprocal" regulatory provisions of § 73.8 and § 173.8 or that may result from Transport Canada requirements (a number of which, if adopted as proposed in the *Canada Gazette* on June 19, 1982, would be the same as those of CTC). Of particular concern to MTB are those potential safety impacts that may be related to emergency response actions because of several fundamental differences in communications requirements. This concern may be offset by the fact that both regulatory systems use

identification numbers assigned to materials based on the worldwide UN System. It is these identification numbers which provide rapid access to emergency response information in the U.S. Emergency Response Guidebook and Canada's Emergency Response Guide for Dangerous Goods.

Commenters are encouraged to discuss the value of this materials identification numbering commonality in offsetting other differences in light of the wide dissemination of the Guidebook and its growing use by fire, police, and other emergency response entities in the United States.

MTB wishes to emphasize that the purpose of this Advance Notice of Proposed Rulemaking is to solicit comments concerning safety impacts due to differences in regulations pertaining to the safe transportation of hazardous materials. It is not intended to address the merits of CTC's regulations (or those proposed by Transport Canada); nor is it intended to serve as a forum for such a purpose.

It is requested that persons desiring to provide oral comments at the hearing advise Mr. Altemos before June 2, 1983.

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53, Appendix A to Part 1 and paragraph (a)(4) of Appendix A to Part 100)

Issued in Washington, D.C. on April 28, 1983.

Alan L. Roberts,

Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

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***Note: Written comments must be received on or before June 29, 1983 (48 FR 20780 May 9, 1983)